

This letters discusses requirements for tax-free sales of motor fuel to the Federal government. See 86 Ill. Adm. Code 130.2080 and 86 Ill. Adm. Code 500.210. (This is a GIL).

June 7, 2001

Dear Xxxxx:

This letter is in response to your letter dated February 21, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This will confirm my telephone conversation with PERSON on February 13, who suggested I address this issue to you. This is pertinent to her letter of March 31, 2000, to PERSON with AAA Regarding AAA credit cards (copy attached.)

BBB processes the AAA credit cards for major Federal Government Agencies and various smaller agencies. BBB handles about 85% of the retail fleet fueling business for the Federal Government.

The AAA card is used by all these agencies and all but the XXX credit cards begin with the number series #. The account numbers for the XXX begins with # and #. I have attached a picture of the graphics of the AAA credit card. **These accounts are ALL billed directly to the Federal Government and not to an individual Federal Government employee.**

The CCC, AAA, and DDD have indicated that they are not receiving the tax deductions they are entitled to from the State of Illinois. These agencies have asked that BBB intercede with the State of Illinois to see if it is possible to handle tax exemptions in the following manner.

AAA cards are issued to Federal Government entities only at the specific request of the United States Government. A Federal Government employee goes to a fuel retail outlet and uses the AAA Card to purchase fuel. (Over 96% of the BBB credit sales transactions are electronic sales; however, The Oil Companies, utilize paper transactions if their electronic point-of-sale equipment is inoperative.) The credit sales transactions are sent to The Oil Companies or to The Oil Companies' processors, who, in turn, electronically transmit the transactions to BBB. BBB settles with The

Oil Companies net of the exempted taxes and provides The Oil Companies with full electronic detail to process the exemptions with the state taxing entity. BBB determines immediately which taxes should be exempted from the sale. To determine if taxes should be exempted, BBB looks at the retail location to see if the retailer is allowed to have taxes calculated. If the Oil Company allows for the retailer to handle exempt taxes, the BBB system will calculate the tax(es) and net the tax(es) from the transaction and bills the Federal Government net of taxes. BBB as an agent of The Oil Companies to handle the calculations, nets the tax from the gross sale, and passes back all the tax data to the Oil Company in an ASCII flat file on the same day that the credit transactions were received. A copy of the tax file layout sent to the Oil Company is attached for your review. The Federal Government agencies are requesting and BBB is proposing that a credit card sale to a Federal Government entity using a AAA Card have the Illinois State Excise tax and the Illinois Sales tax calculated and exempted net of the sale. The tax data is passed back electronically to The Oil Company who will then pass back the tax data to the appropriate retailer who paid the tax to the state. That retailer will file for the tax credit with the electronic information it has received.

The AAA card should not place a burden on the Illinois Retailers, as there is no need to verify specific digits of the account number or perform any other checks to insure the user is eligible for tax exemptions. ALL USERS are government employees and the charges will be billed to the Federal Government for payment. It is only necessary to identify the BBB emblem on the lower left-hand side of the credit card.

Should you have any questions, please contact me immediately. Currently, BBB is not calculating and exempting any taxes via the AAA Card in the State of Illinois. Your prompt consideration and written ruling will be appreciated.

Department regulations found at 86 Ill. Adm. Code 500.210 detail the manner in which tax-free sales of motor fuel by licensed distributors and suppliers must be documented under the Motor Fuel Tax Law. Subsection (c) of this regulation addresses the manner in which tax-free sales to the Federal government or its instrumentalities must be documented. The regulation states, in part, that "[t]he seller shall retain the invoice number and date, name of carrier, bill of lading/manifest number, name of purchaser, Illinois origin, Illinois destination, and invoiced gallons."

Under the Retailers' Occupation Tax and Use Tax, sellers required to collect tax must either charge tax or document an exemption when they make deliveries in Illinois. Sales to exempt organizations, such as the U. S. Government, must be documented in order to be exempt. Retailers that sell tangible personal property to exempt organizations must obtain the exemption identification ("E") number issued to the exempt organization by the Department in order to document that sales to the organization are exempt. Retailers may also accept U.S. Government Bank Cards in sales to the U.S. Government and its agencies without requiring an Illinois exemption number. See 86 Ill. Adm. Code 130.2080. This is the case if the bank card is billed directly to the U.S. Government and not to U. S. Government employees. As we understand it, AAA cards carrying the BBB emblem are all billed directly to the U.S. Government and not to U. S. Government employees.

Under Illinois law, there is a method by which the Federal Government can purchase motor fuel without paying the motor fuel tax. As stated above, motor fuel may be sold free of motor fuel tax

by distributors and suppliers who document the sales as prescribed under 86 Ill. Adm. Code 500.210(c). As you can see, these procedures are designed for utilization when a distributor or supplier makes sales directly to the Federal government.

A direct exemption for sales made to the Federal government at the retail level ("the pump") becomes much more problematic because the statute is not structured in a way to provide a direct exemption at this level. We do not see how the method you have devised for tax-free sales of motor fuel from retailers could, on a practical basis, be transacted unless the retailer making the sale is also the distributor or supplier. In this case credit cards utilized are generally issued by the distributor or supplier licensed to report sales made at its retail locations.

The method you have proposed does not fit well with the structure of the Motor Fuel Tax. Under the Motor Fuel Tax Law, distributors and suppliers collect the motor fuel tax from the retailer when they deliver the motor fuel. The tax is thus paid up front by the retailer and is passed along to the end user as part of the selling price of the motor fuel sold at the pump. As we understand it, under the method you have proposed, the retailer would submit the credit card receipt to the card issuer (in your scheme information from the retailer to the card issuer and from the card issuer back to the retailer is channeled through the oil company) who would reimburse the retailer for the gas less the amount of tax. The card issuer would also bill the government for only the amount of gas and not include any tax. In this scheme, the retailer, unless it is also the distributor or supplier, is not made whole, because it has already paid motor fuel tax to its distributor or supplier. If the retailer were also the distributor or supplier, we believe this method could work since the sale could be reported and documented as a tax-free sale of motor fuel by the distributor or supplier to the U.S. Government.

If Retailers' Occupation Tax and Use Tax (sales tax) were paid, a claim for credit would have to be filed by the taxpayer. The Department's regulation at 86 Ill. Adm. Code 130.1501 describes the procedures used to obtain a credit for sales tax that was erroneously paid. Please note that only persons who have actually paid tax to the Department can file a claim for credit. Since retailers usually pay the tax to the Department, only retailers generally file claims for credit.

In order to submit claims for credit, taxpayers must first establish that they have either borne the burden of the tax or that they have unconditionally repaid the amount of tax to the vendees from whom they have collected the tax. The taxpayers must apply for the credit in the manner described in the rule. Under Illinois sales tax laws, retailers are not required to file claims for credit. The Department has no authority to compel retailers to file a claim for credit. Whether or not retailers refund the taxes paid and file claims for credit with the Department is a private matter between retailers and purchasers. If retailers agree to file a claim for credit, purchasers must provide the retailers with documentation specifying the nature of the exemption.

With regard to claims for credit for sales tax previously paid on motor fuel, the process will be more complicated because retailers generally prepay a portion of the sales tax to their distributors, suppliers or other resellers of motor fuel as required by Section 2d of the Retailers' Occupation Tax Act. 35 ILCS 120/2d. Section 2d provides that [a]ny person engaged in the business of selling motor fuel at retail, as defined in the Motor Fuel Tax Law, and who is not a licensed distributor or supplier, as defined in the Motor Fuel Tax Law, shall prepay to his or her distributor, supplier, or other reseller of motor fuel a portion of the tax imposed by this Act if the distributor, supplier, or other reseller of motor fuel is registered under Section 2a or Section 2c of this Act." This prepayment is in the amount of \$0.04 per gallon of motor fuel, except gasohol as defined in Section 2-10 of the Retailers' Occupation Tax Act, 35 ILCS 120/2-10, which is in the amount of \$0.03 per gallon. If the retailer has prepaid sales tax to his distributor, supplier, or other reseller of motor fuel, the distributor, supplier or other reseller would have to refund the prepaid tax to the retailer before he could file a claim for credit

with the Department. However, there is no requirement that the distributor, supplier or reseller refund the tax and file a claim for credit, and the Department has no authority to compel a distributor, supplier or reseller to do so.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.